

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES DUPWE, JR.,

Plaintiff,

vs.

No. CIV 08-0988 JB/RHS

ANN STERN,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Defendant Ann Stern's Motion Extending Time to 9th February 2009 to file re-file [sic] Complaint and file OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed January 28, 2009 (Doc. 11); (ii) Motion Extending Time from 9th February 2009 to 16th February 2009 to re-file Complaint and file OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed February 11, 2009 (Doc. 13); and (iii) Motion for Extending Time from 16th February 2009 to 23rd February 2009 to re-file Complaint and file completed OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed February 20, 2009 (Doc. 16). The Court held a hearing on February 25, 2009. The primary issues are: (i) whether the Court should grant Defendant Ann Stern's motion for extension of time to file an opposition to Plaintiff Charles Dupwe, Jr.'s motion to remand and for attorney's fees; and (ii) whether the Court should grant Stern's motion for extension of time to file and/or re-file a complaint in this case. Because Stern has presented grounds for extension of time to file an opposition to the motion to remand, and because Stern has already filed her opposition, the Court will grant the motion for extension to file the opposition and will consider the opposition in its ruling on the motion to remand and for attorney's fees. Because there

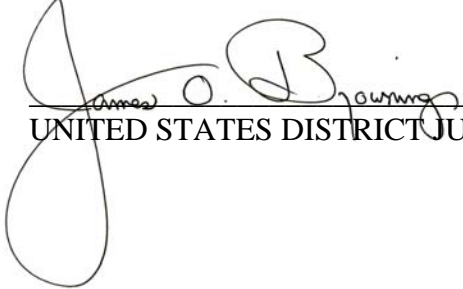
is no need for an extension of time to file a complaint in this lawsuit because there is no present deadline, and because there is no need for Stern to file a complaint at this stage of the case, the Court will deny that part of Stern's motions.

Stern appears to believe that, by removing this case to federal court, she may become the plaintiff. Accordingly, she has styled herself the plaintiff in her proposed pleadings. Ultimately, what Stern is trying to accomplish is to assert counterclaims which, she believes, the magistrate-court judge did not allow her to file. As the Court stated at the hearing, at this stage of the case, it is not appropriate for Stern, who is the Defendant in the remanded case, to file a complaint. If she wishes to assert claims in federal court against Dupwe, she must file a complaint, not in this lawsuit, but as a means of initiating a separate lawsuit. There is therefore no reason to allow her an extension of time to file a complaint in this case.

In conclusion, the Court will grant the requested extensions of time and will consider the opposition to the motion to remand that Stern has already filed with the Court. Stern also indicates that she has not been able to complete her opposition and that she wishes to supplement what she has already filed. The Court told her that it would not preclude her from filing a supplement to her opposition. The Court, however, will not delay its decision-making on the motion to remand. Having granted three extensions to file an opposition, and having held a hearing on the motion to remand, the Court has given Stern ample opportunity to get her arguments in front of the Court and on the record. The Court also believes that it has carefully considered the law governing the motion and has sufficient information to decide the motion to remand.

IT IS ORDERED that (i) Defendant Ann Stern's Motion Extending Time to 9th February 2009 to file re-file [sic] Complaint and file OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed January 28, 2009; (ii) Motion Extending Time from 9th

February 2009 to 16th February 2009 to re-file Complaint and file OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed February 11, 2009; and (iii) Motion for Extending Time from 16th February 2009 to 23rd February 2009 to re-file Complaint and file completed OPPOSITION to Charles Dupwe, Jr.'s Motion for Remand and for Attorney's Fees, filed February 20, 2009 are granted in part and denied in part. The Court grants Defendant Ann Stern the requested extensions to file her opposition, and the Court will consider her opposition in deciding the pending motion to remand. The Court does not grant an extension of time to file a complaint in this case.



UNITED STATES DISTRICT JUDGE

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Pro se Defendant